

SUMMARY REPORT OF INVESTIGATION¹**I. EXECUTIVE SUMMARY**

Date of Incident:	April 14, 2014
Time of Incident:	Approximately 12:30 AM to 2 AM
Location of Incident:	10 th District
Date of COPA Notification:	May 31, 2016
Time of COPA Notification:	12:41 PM

On April 14, 2014 at approximately 12:30 AM, Officer A and Officer B were patrolling around Cermak Road and California Avenue when they observed and stopped Subject 1 for failing to stop at a red light. Upon observation of Subject 1, Officer A and Officer B believed that Subject 1 was under the influence of alcohol. Officer A called Officer C for assistance to which he and Officer D arrived. The officers subsequently arrested Subject 1 for being under the influence of alcohol and transported him to the 10th District. One of the officers placed Subject 1 into the bullpen near the 10th District processing area. While in the bullpen, Subject 1 became angry and repeatedly hit the bullpen door and glass. The officers decided to handcuff Subject 1 to the wall where a struggle ensued between Subject 1 and the officers. Subject 1 alleges Officer A used excessive force during the struggle; COPA reviews these allegations.

II. INVOLVED PARTIES

Involved Officer #1:	Officer A, Star #XXXX, Employee #XXXX, Date of Appointment: XXX XX, 2010, Police Officer, Unit of Assignment: XX, Date of Birth: XXX XX, 1978, Male, White
Involved Officer #2:	Officer D, Star #XXXX, Employee #XXXX, Date of Appointment: XXX XX, 2006, Police Officer, Unit of Assignment: XX, Date of Birth: XXX XX, 1972, Female, Hispanic
Involved Officer #3:	Officer C, Star #XXXX, Employee #XXXX, Date of Appointment: XXX XX, 2010, Police Officer, Unit of Assignment: XX, Date of Birth: XXX XX, 1977, Male, Hispanic

¹ On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

Involved Officer #4: Officer B, Star #XXXX, Employee #XXXX, Date of Appointment: XXX XX, 2007, Police Officer, Unit of Assignment: XX, Date of Birth: XXX XX, 1982, Male, White

Subject #1: Subject 1, Date of Birth: XXX XX, 1969, Male, Hispanic

III. ALLEGATIONS

Officer	Allegation	Finding
Officer A	1. Choked Subject 1, kneed Subject 1, and hit Subject 1 about his head with handcuffs, in violation of Rules 2, 3, 8, and 9	Not Sustained

IV. APPLICABLE RULES AND LAWS

Rules

1. **Rule 2:** Any action or conduct which impeded the Department's efforts to achieve its policy and goals or brings discredit upon the Department
2. **Rule 3:** Any failure to promote the Department's efforts to implement its policy or accomplish its goals
3. **Rule 8:** Disrespect to or maltreatment of any person, while on or off duty.
4. **Rule 9:** Engaging in any unjustified verbal or physical altercation with any person, while on or off duty.

General Orders

1. **G03-02:** Use of Force Guidelines (Effective Date: October 1, 2002)
2. **G03-02-01:** The Use of Force Model (Effective Date: May 16, 2012)
3. **G03-02-02:** Force Options (Effective Date May 16, 2012)

V. INVESTIGATION²

a. Interviews

² COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

IPRA conducted Subject 1's audio statement on August 2, 2017. Subject 1 stated that on April 14, 2014, he was near Cermak Road and California Avenue. Subject 1 stated he was intoxicated and arrested around 12:30 AM. Subject 1 stated he was not driving. Subject 1 stated he was at the corner using the payphone with a beer in his hand. Subject 1 stated as he was going towards his truck, he saw officers in their vehicle so he threw the bottle under this truck. Subject 1 said the officers saw him throw the bottle underneath the truck, and the officers, now known to him as Officer A and Officer B, made a U-turn on Cermak Road. Subject 1 stated the officers told him to stop from getting into truck and asked him what he threw. Subject 1 stated he told the officers a "full bottle" because he did not want the officers to stop him. Subject 1 stated that officers told him to put hands on the hood, and an officer searched him, but did not recall which officer. Subject 1 stated he believed Officer B looked under the truck and saw the "empty bottle." Subject 1 stated that, after obtaining consent, an officer searched the truck, but did not recall which one. Subject 1 stated the officers handcuffed him and placed him the backseat of the squad car. Subject 1 stated the officers told him that they were taking him to the 10th District. Subject 1 then started "running his mouth and [using] profanity." Subject 1 stated he was mad for them taking him into the district.

Once at the district, Subject 1 stated that Officer A immediately placed him in the first cell uncuffed. Subject 1 stated he asked what he was charged for and what is the bond amount. Subject 1 stated he exchanged profanity with Officer A when Officer A passed by him. Subject 1 indicated that he was yelling through the door. Subject 1 said Officer A, Officer B, Officer D, and Officer C told him they were going to handcuff him. Subject 1 stated that Officer D asked him to turn around and put his hands in the back to which he did. Subject 1 stated that Officer A grabbed his neck and began choking him with both hands while using profanity towards Subject 1. Subject 1 indicated that he consequently moved his hands from the back and grabbed Officer A's wrists trying to pull his hands away. Subject 1 stated that Officer B and Officer C then tried to grab his hands and restrain him. Subject 1 said Officer A kneed him in his groin resulting in his saliva coming out. Subject 1 indicated that Officer A then hit the right side of Subject 1's forehead and the back of his head with his handcuffs between five to ten times. Subject 1 stated he had lumps, but did not receive medical treatment. Subject 1 stated that after he got hit, the officers fell on top of him. Subject 1 stated he was handcuffed to the wall. Subject 1 stated that no field sobriety tests were conducted. Subject 1 said, after about forty-five minutes, Officer C gave him a breathalyzer test, and he blew 0.18.³

COPA interviewed Officer B on February 14, 2018. Officer B described the weather condition as wet and rainy on April 14, 2014. Officer B stated that while patrolling the area with Officer A, he saw a car skid through a red light at an intersection and slam on the brakes. He stated that he found out later that the car was driven by Subject 1. Officer B stated he pulled Subject 1's vehicle to the side. As he approached Subject 1's vehicle, Officer B indicated he looked into the car and saw empty bottles and cans of beer. Officer B said that Subject 1 told him he was a confidential informant and to let him go. Officer B stated that Officer A called Officer C for assistance as he is proficient in DUIs. He stated that eventually Officer C arrived along with Officer D. Officer B stated he observed Subject 1 having slurred speech. Officer B indicated that Officer C determined Subject 1 was under the influence, thus, the officers transported Subject 1 to the 10th District.

³ Attachment 27

At the 10th District, Officer B stated that an officer placed Subject 1 in the bullpen with no handcuffs. Officer B stated he began completing paperwork where he did not have a clear view of the bullpen. Officer B indicated that Subject 1 was yelling, pounding on the door, and using profanity. Officer B said he began walking to the lock box when he heard Officer A and Officer C say "let's just cuff him to the wall because he is making a lot of noise in there." Officer B said he continued to walk to the lock box because he believed it was not an issue. Officer B stated that the officers were struggling to cuff Subject 1 to the wall because he heard yells from more than one person. Officer B stated he then decided to return to the processing area. Officer B stated as he walked there, he saw Officer A and Officer C struggling to cuff Subject 1 to the wall. Officer B indicated that he observed Subject 1 tense up and looking unrelaxed. Officer B stated that the officers were trying to bring Subject 1 to the wall in order to cuff him. Officer B stated he did not recall where Officer A or Officer C's hands were about Subject 1's body. Officer B stated he assisted them by pulling Subject 1's wrist and hand to the wall because one cuff was already placed on Subject 1. Officer B stated he could not tell who placed one cuff on Subject 1, or whether it was placed on him before or after he entered the bullpen. Officer B stated that Subject 1 was tensing up so it was difficult to cuff him. Officer B stated he put some weight on Subject 1 because he tensed his body. Officer B stated he held Subject 1's arm because it looked as if Subject 1 would throw a punch. Officer B stated that, at some point, Officer A and Officer C "laid" Subject 1 on his back on top of the bench. Officer B stated they continued to struggle to get Subject 1's arm to the bar to cuff him. Officer B stated he does not recall what Officer A was doing when Subject 1 was lying the bench. Officer B indicated that since there was a loose cuff, he was trying to make sure the cuff would not strike any of the officers. Officer B stated that the officers were eventually able to cuff Subject 1 to the wall.

Officer B stated the struggle was approximately fifteen seconds. Officer B stated he did not recall if Subject 1 put his hands on him, Officer A, or Officer C. During the process of handcuffing Subject 1, Officer B stated the officers gave verbal commands but does not specifically recall what was said. Officer B stated that Officer A did not place his hands on Subject 1's head. Officer B stated that he does not recall if Officer A choked Subject 1, if Officer A had his handcuffs in his hands, or if Officer A kneed Subject 1. Officer B stated he was focused on attempting to cuff Subject 1 to the wall and does not know what the other officers were doing. Officer B stated he did not see Officer A hit Subject 1 on his head or body with handcuffs. Officer B stated he did not see any injuries or redness anywhere on Subject 1.⁴

COPA interviewed Officer C on February 22, 2018. Officer C stated that he and his partner, Officer D, assisted Officer A and Officer B with the traffic stop of Subject 1. Once he arrived, Officer C said he spoke to Subject 1, but did not specifically recall the conversation. Officer C stated Subject 1 had an odor of alcohol and bloodshot eyes. Officer C stated he believed Subject 1 to be impaired and under the influence of drugs or alcohol. Officer C stated, in addition to forming the opinion that Subject 1 was impaired, Subject 1 had open alcohol in his vehicle and a revoked driver's license. Officer C stated Subject 1 was transported to the 10th District for further investigation and processing. Officer C stated he conducted sobriety tests, but did not recall whether it was on the street or at the district.

⁴ Attachment 37

Once at the 10th District, Officer C stated that Subject 1 was placed in the holding cell. Officer C stated the holding cell had a sliding metal door with a glass window, as well as, glass around the holding cell. Officer C stated he began processing paperwork, and Officer A was helping him with paperwork about two feet away. Officer C stated he did not recall what the other officers were doing. Officer C indicated he was about ten to fifteen feet from the holding cell, and had a clear view of Subject 1. Officer C stated that a few minutes into doing paperwork, Subject 1 became hostile and unstable because Subject 1 was screaming profanities, kicking the glass and sliding door, and violently using his hands, feet, and head on the door. Officer C stated that when Subject 1 kicked the door, it was moving. Officer C stated the officers gave him multiple verbal commands to sit down and to stop, but he continued. Officer C stated the officers told Subject 1 that if he did not stop, then they would cuff him to the wall, but he did not stop. Officer C stated that the officers entered the holding cell to cuff Subject 1 to prevent Subject 1 from damaging the property and from injuring himself while in custody. Officer C stated that Officer A was slightly behind him to the left, and they were approximately two to three feet from Subject 1. Upon entering, Officer C stated he looked at Officer A with a clenched fist. Officer C said he, simultaneously, told Subject 1 to sit down and that he "cannot be doing this." As he addressed Subject 1, Officer C stated Subject 1 clenched his fist. Officer C described Subject 1's face as mean towards Officer A, and indicated that Subject 1 slightly tilted his body in a fighting stance towards Officer A. Officer C stated Subject 1 refused the commands and made a swinging motion towards Officer A. Officer C stated he grabbed Subject 1's shoulders and conducted a takedown, placed Subject 1 on the bench to control him, and attempted to cuff Subject 1 to the wall. Officer C stated that Officer A was trying to assist in cuffing Subject 1. Officer C stated that Officer A attempted to grab an arm. Officer C stated that he did not recall whose cuffs were used. Officer C stated he cuffed Subject 1, but did not recall whether Officer A handed him the cuffs or he pulled the cuffs from his "pouch." Officer C stated he held the cuff, and did not recall if Officer A was holding cuffs.

After the takedown, Officer C said he managed to get control of Subject 1's left arm and proceeded to cuff him to the wall, but Subject 1 turned his head and he spit on Officer A. Officer C stated Officer A left the holding cell once Subject 1 spit on him. Officer C stated that there was no point during the struggle where it seemed that Subject 1 was going to comply. Officer C stated he yelled, "stop resisting." Officer C stated that Officer B arrived at some point and assisted. Officer C said Subject 1 swung his arm and scratched Officer B with his nails. Officer C stated he did not see Officer A place his hands on Subject 1's neck. Officer C stated that Officer A did not choke or knee Subject 1. Officer C stated that Officer A did not hit Subject 1 in the neck or forehead. Officer C stated that, after approximately thirty seconds to a minute, Subject 1 was cuffed to the wall. Officer C stated once Subject 1 was cuffed, he calmed down. Once Subject 1 was cuffed to the wall, Officer C stated he finished reports, administered a breathalyzer test which was "significantly over the legal limit," and conducted sobriety tests which Subject 1 did not pass. Officer C stated he did not see any injuries or blood on Subject 1. Officer C stated he does not believe Subject 1 sustained scratches because he would have noticed the scratches.⁵

COPA interviewed Officer A on March 8, 2018. Officer A stated that he did not remember the weather conditions on April 14, 2014. Officer A stated that while patrolling with Officer B, he observed a vehicle that failed to stop at a red light. Officer A stated the driver, now known to him

⁵ Attachment 39

as Subject 1, looked at him and Officer B and turned onto Cermak Road. Officer A said he followed Subject 1 and pulled him over on Cermak Road. Officer A stated he approached the vehicle from the driver's side and observed Subject 1 to be highly intoxicated because he smelled alcohol coming from the vehicle, smelled alcohol on Subject 1's breath, and saw empty cans of beer on the vehicle floor. Officer A stated he did not recall the exact questions he asked Subject 1. Officer A stated that Subject 1 tried to tell him that Subject 1 was a confidential informant for the police. Officer A stated he called Officer C to assist because Subject 1 was intoxicated. Officer A said that Officer C and Officer D arrived, and Officer C took over because he is an expert in DUIs. Officer A stated Subject 1 was then handcuffed. Officer A stated that Subject 1 was "very talkative and loud", "trying to talk himself out of it," but did not resist or act combative.

Officer A stated he transported Subject 1 to the 10th District. Officer A stated that he and the other officers placed Subject 1 in the bullpen in front of the processing area with no handcuffs. Officer A stated the bullpen contains glass all around, a sliding door, and a cement bench. Officer A said there were no other individuals in the bullpen with Subject 1. Once Subject 1 was placed into the bullpen, Officer A said he helped C with a name check and paperwork. Officer A indicated that he was sitting about fifteen to twenty feet from the bullpen. Officer A stated that Subject 1 became irate because he screamed profanity, became combative in the bullpen. He stated that Subject 1 was kicking and punching the glass, and kept pacing. Officer A stated he told Subject 1 to calm down and relax because he may hurt himself and do damage to the glass, but he continued. Officer A indicated that Subject 1 did this for "a while." Officer A stated he told Subject 1 to relax or the officers would handcuff him to the wall. Officer A stated he and the other officers warned Subject 1 multiple times, but he continued. Officer A said that he and the other officers decided to handcuff Subject 1 to the wall so he did not hurt himself or do damage to the bullpen. Officer A said that when he entered the bullpen, he was in the middle of Officer C and Officer D.

At this point, Officer A described Subject 1 as aggressive because he was screaming profanity and punching the wall and glass. Officer A stated that, before he entered the bullpen, he saw Subject 1 stiffen up through the glass. Officer A stated when he opened the door, Subject 1 got into an aggressive stance as his right hand was chest level and he clenched his right hand. As soon as the door opened, Officer A said Subject 1 tried to punch him in the face with his right, closed fist. Officer A stated one of the other officers, he could not recall which, grabbed Subject 1's right arm, so Subject 1 did not make contact with him. Officer A stated Subject 1 then tried to swing with his left arm, but the other officer grabbed Subject 1's left arm. Officer A said he simultaneously tried to push Subject 1 back inside by placing his hands on Subject 1's chest and the lower part of Subject 1's torso because Subject 1 made it outside of the bullpen, but Subject 1 spit in his face. Officer A indicated that he never placed his hands above Subject 1's chest, nor did he make any contact with Subject 1's neck or face. Officer A stated he tried to get Subject 1 to the wall and into cuffs by pushing Subject 1 backwards towards the wall. Officer A said he gave verbal commands like, be calm, not to stiffen up, and to present his hands and arms. Officer A stated that Subject 1 did not want to be pushed back because Subject 1 pushed towards the officers as Subject 1 attempted to swing his arms. Officer A stated that Subject 1 was swinging at the officers so he tried to restrain him and do emergency cuffing. Officer A stated Subject 1 continued to move forward and away from the wall, so an officer conducted an emergency takedown but he did not remember which officer. Officer A does not recall where Subject 1 landed.

Officer A stated that he took out the cuffs when the officers got Subject 1 closer to the wall or up on the wall. Officer A said he probably handcuffed Subject 1. Officer A stated he did not recall if he put one cuff on first or both cuffs at the same time. Officer A stated it was a struggle to get Subject 1's hands behind his back. Officer A stated he did not place his hands around Subject 1's neck, did not choke him, did not knee him, and did not strike him about the body or head with handcuffs. Officer A indicated that Subject 1 was an active resister because (1) he tried to punch Officer A, (2) he spit at Officer A, (3) he was being aggressive, (4) he swung his arms, and (5) he did not comply with verbal commands. Officer A stated he sustained scratches on his fingers from the teeth of the handcuffs. Officer A stated when he initially stopped Subject 1, he did not observe any injuries on him. Officer A stated he did not observe injuries after Subject 1 was handcuffed to the wall. Officer A stated Subject 1 did not go to the hospital because he had no physical injury.

After reviewing photographs of Subject 1 and his arrest report, Officer A stated he observed "handcuff marks" and "a small scratch on [Subject 1's] right side of forehead." Officer A stated Subject 1 did not have the marks and scratch when he was stopped, and does not know how Subject 1 sustained the injuries. Officer A stated he does not remember seeing injury after Subject 1 was handcuffed to the wall.⁶

COPA attempted to serve witness Officer D numerous times over the course of a month; however, the attempts were met with negative results.⁷ Ultimately COPA decided, based on the evidence to proceed with its investigation without a statement from Officer D.

b. Digital Evidence

IPRA requested Crime Scene/Evidence Photographs related to RD #XXXXXX. The photographs depict the right side of Officer A's neck, presumably the location where Subject 1 spit onto him, and cuts on Officer A's fingers. The photographs also depict cuts on Officer B's finger.⁸

COPA received photographs of Subject 1 taken at the Cook County Jail. The photographs depict red marks and scratches on the front and back of his forearm and a red mark or scratch on the right side of his forehead.⁹

COPA received documents pursuant to a subpoena served upon the City of Chicago Department of Law. Its response contains a memorandum from the 10th District Commander regarding requested video footage from the 10th District for April 14, 2014. The memorandum states that video retrieval was unable to be furnished because the date of the incident was prior to the installation of the 10th District's video retrieval system.¹⁰

c. Documentary Evidence

⁶ Attachment 44

⁷ Attachments 45 and 46

⁸ Attachment 28

⁹ Attachment 30 pages 51-59

¹⁰ Attachment 30 page 73

Subject 1's **Arrest Report**, CB #XXXXXX, indicates that Subject 1 was charged with: (1) speeding; (2) driving to the left side of the center of the road; (3) driving under the influence of alcohol; (4) driving under the influence of alcohol while the alcohol concentration in the person's blood, other bodily substance, or breath is 0.08 or more aggravated DUI (5) aggravated driving under the influence of alcohol; (6) driving on a revoked or suspended driver's license; (7) aggravated battery of a peace officer; and (8) being the proximate cause of an injury to a peace officer. The report states that Officers C and D assisted Officers A and B in a traffic stop. The report states that Officer A observed Subject 1 committing traffic violations. The report states Officer C observed a strong odor of alcohol from Subject 1's breath, slurred speech, and red bloodshot eyes. The report states that Subject 1 told the officers he consumed alcohol. The report further states Subject 1 was taken to the 10th District for processing.

During processing, the report states, that Subject 1 became loud and began striking the glass in a consistent manner. It states that Officers A and C attempted to calm down Subject 1 to which Subject 1 took an aggressive stance and proceeded to lunge with a closed fist at Officer A. The report states that Officer C then performed an emergency takedown. The report states that while attempting to place Subject 1 in handcuffs, Subject 1 violently swung his arms striking Officer A causing minor lacerations to his hands and face. The report states that Subject 1 spit on Officer A's face. The report states that a breathalyzer yielded a blood alcohol concentration of .181. The report lists Subject 1 as under the influence of alcohol.¹¹

The **Original Case Incident Report**, RD #XXXXXXXX, states that Officer A and Officer B sustained injuries while trying to subdue Subject 1. The report indicates that Officer A sustained cuts to his fingers and scratch marks to his neck and Officer B sustained cuts to his thumb.

The report states that Officer C was interviewed and he stated that he and Officer D assisted in Subject 1's arrest, and Officer C administered the breathalyzer test. The report states that Subject 1 began yelling and pounding on the door and window of the holding cell, so Officer C and Officer A tried to restrain Subject 1. The report states that when Officer A opened the door, Subject 1 pushed it open, stepped out, and raised his fists towards Officer A. As Officer C and Officer A attempted to restrain Subject 1, Subject 1 spat into Officer A's face and began clawing at Officer A and flailing his arms. The report states that as they tried to handcuff Subject 1, Subject 1 grabbed the open cuff, and while struggling with Officer A, cut Officer A's fingers.

The report states that Officer D was interviewed. The report states that Officer D saw the struggle and saw Subject 1 spit in Officer A's face, but did not see how the officers were injured.

The report states that Officer A was interviewed and stated that when he opened the holding cell, Subject 1 rushed out towards him with raised fists. The report states that Officer A grabbed Subject 1's arm and Officer C grabbed Subject 1 from behind, subsequently, forcing Subject 1 back into the cell. The report states that during the struggle, Subject 1 spat on Officer A's face and as they were handcuffing Subject 1, he grabbed the open link and twisted it cutting Officer A's fingers. The report indicates that Officer A said Officer B also got cut during the struggle, but did not see Officer B get cut. The report states that but Officer A saw Subject 1 repeatedly elbowing Officer B in the body.

¹¹ Attachment 5

The report states that Officer B was interviewed and stated that he entered the processing room and heard the struggle. The report states Officer B saw Subject 1 spit at Officer A and saw him actively clawing at Officers A and C. The report also states that Officer B grabbed Subject 1's hand and was cut helping to cuff him.^{12, 13}

The Tactical Response Report authored by Officer B states that he was in imminent threat of a battery. Under "Member's Response," Officer B checked the following boxes: member presence and take down/emergency handcuffing. The report states that Officer B acted within Department rules and regulations, and based upon Subject 1's actions used minimal amount of necessary force to control Subject 1 and prevent a further battery.¹⁴

The Tactical Response Report authored by Officer A states that he was in imminent threat of a battery. Under "Member's Response," Officer A checked the following boxes: member presence, verbal commands, and take down/emergency handcuffing. The report states that Officer A acted within Department rules and regulations, and based upon Subject 1's actions used minimal amount of necessary force to control Subject 1 and prevent a further battery.¹⁵

The Tactical Response Report authored by Officer C states that he was in imminent threat of a battery. Under "Subject's Actions," Officer C checked the following boxes: did not follow verbal direction, stiffened, pulled away, and attack without weapon. Under "Member's Response," Officer C checked the following boxes: member presence, verbal commands, wristlock, armbar, and take down/emergency handcuffing. The report states that Officer C acted within Department rules and regulations, and based upon Subject 1's actions used minimal amount of necessary force to control Subject 1 and prevent a further battery.¹⁶

d. Additional Evidence

According to the Illinois Department of Corrections offender search results, Subject 1 was sentenced, with respect to this arrest, to six years for aggravated driving under the influence of alcohol, five years for one count of aggravated battery of a peace officer, three years for one count of aggravated battery of a peace officer and three years for driving while revoked.¹⁷

COPA received testimony transcripts from Subject 1's criminal trial related to XXXXXXXX and XXXXXX. Subject 1, Officer B, Officer A, and Officer C testified.¹⁸

VI. ANALYSIS

COPA recommends a finding of Not Sustained for **Allegation #1** against Officer A, that he choked Subject 1, kneed Subject 1, and hit Subject 1 about his head with handcuffs.

¹² Attachment 6

¹³ E.g. Attachment 7

¹⁴ Attachment 8

¹⁵ Attachment 9

¹⁶ Attachment 10

¹⁷ Attachment 14

¹⁸ Attachments 29 and 30

Determining whether the force used to effect a particular seizure is “reasonable” requires balancing the nature and quality of the intrusion on the individual’s Fourth Amendment interests against the importance of the governmental interest alleged to justify the intrusion. Such an analysis is inherently fact-dependent and requires consideration of multiple factors.¹⁹

Subject 1 claims that Officer A used excessive force even though he was compliant and did not provoke the officers. However, the officers’ accounts of the events indicate that Subject 1 was aggressive and hostile since he screamed profanities and pounded on the windows and door with parts of his body. The officers also claim that Subject 1 attempted to punch Officer A, tensed up, and resisted. Based on the evidence it can be inferred that Subject 1 was intoxicated and a struggle ensued when the officers attempted to handcuff Subject 1 to the wall. The officers grabbed Subject 1’s arms, pushed him backwards, and conducted an emergency takedown. As a result, this force may have been reasonable to secure Subject 1 and ensure officer safety. Nonetheless, the record is unclear and the accounts are inconsistent regarding the allegation of excessive force against Officer A. Officer A denied that the allegation occurred at any point during the struggle. Likewise, Officer B and Officer C said they either do not recall or did not see Officer A choke, knee, or hit Subject 1. There are no independent witness or video footage. In this instance, there is not enough evidence in the record to prove or disprove this allegation.

Moreover, photographs of Subject 1 show red marks and scratches on his forearm and a red mark/laceration on his forehead. Since Subject 1 did not possess the injuries prior to this incident, the injuries could be consistent with the struggle that ensued. Also, the officers made statements that there was an open, loose cuff. As such, the struggle and open cuff likely contributed to the resultant injury. There is insufficient evidence to prove or disprove that Officer A used excessive force as alleged. Therefore, COPA recommends a finding of Not Sustained.

VII. CONCLUSION

Based on the analysis set forth above, COPA makes the following findings:

Officer	Allegation	Finding
Officer A	Choked Subject 1, kneed Subject 1, and hit Subject 1 about his head with handcuffs, in violation of Rules 2, 3, 8, and 9	Not Sustained

Approved:

Deputy Chief Administrator – Chief Investigator

Date

¹⁹ *Graham v. Connor*, 490 U.S. 386 (1989).

Appendix A

Assigned Investigative Staff

Squad#:	XX
Investigator:	Investigator 1
Supervising Investigator:	Supervising Investigator 1
Deputy Chief Administrator:	Deputy Chief Administrator 1